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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 684

COUNTY OF MAHNOMEN, A MUNICIPAL CORPORATION,
Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Supreme Court of the United States:

The petition of the County of Mahnomen, Minnesota, a municipal corporation, for a writ of certiorari directed to the United States Circuit Court of Appeals, Eighth Circuit, respectfully shows to this Honorable Court:

I.

The Summary Statement of the Matter Involved.

Your petitioner seeks to have this Court review the decision of the United States Circuit Court of Appeals, Eighth Circuit, in the cases entitled: County of Mahnomen, a municipal corporation, appellant, vs. United States of America, appellee (No. 12340 Civil), and United States of America,

appellant, vs. State of Minnesota, et al., appellees (No. 12376 Civil), handed down on December 7, 1942, and as yet unreported, affirming that part of the judgment (R. 33 to 36) of the United States District Court for the District of Minnesota, Sixth Division, entered March 7, 1942, which allowed recovery of the sum of $405.97, the aggregate of taxes for 1911 to 1921, both inclusive, paid by Isabelle Garden, an adult, mixed-blood Indian of the White Earth Reservation in Minnesota upon her Indian allotment, and reversing that part of said judgment which in effect denied recovery of taxes paid by said allottee upon her said allotment for the years 1922 to 1925.

This action had its origin in a suit brought by the United States of America in 1940 against County of Mahnomen, its officers and the State of Minnesota. It involved seven allotments in the White Earth Indian Reservation to Indians. It was dismissed as to the State of Minnesota.

Seven allotments are involved in this action but since the principal and only important issue involves parcel 7 alone, the allotment of Isabelle Garden, we shall state the facts only in so far as they involve that allotment.

Isabelle Garden is a living, female, mixed-blood Indian of the White Earth Reservation in Minnesota who was born in the month of July, 1893, and therefore became an adult in July, 1911 (R. 22). She was allotted the east half of the southeast quarter of section five (5) in township one hundred forty-four (144) north, of range forty-one (41) west, of the Fifth Principal Meridian in Mahnomen County, Minnesota, on December 13, 1902, as her original allotment Number 3612 (R. 19-20). A patent in fee was issued to her on December 8, 1919. On August 24, 1917, said Isabelle Garden (being then an adult, mixed-blood Indian) paid taxes for the years 1911, 1912, 1913, 1914 and 1915 on her said allotment and on December 24, 1917, paid those for 1916. She paid the taxes for 1917 and

1918 in semi-annual installments as permitted by the statutes of the state of Minnesota before the same became delinquent. The 1919 taxes were paid by her in one sum on May 24, 1920, and before the same became delinquent. The 1920 taxes were permitted to become delinquent but were paid in full on February 17, 1922. The taxes for 1921 were paid in installments before they became delinquent. Taxes for 1922 to 1927, inclusive, were redeemed on June 30, 1936 (R. 21). There is no allegation, proof or even suggestion that said taxes were paid under duress or involuntarily. Nor, since many of them were paid currently and year after year, could the claim well be made that the payments were other than voluntary payments.

In February, 1923, said allottee, Isabelle Garden (being then an adult, mixed-blood Indian to whom a patent in fee simple had issued December 8, 1919, pursuant to the policy of the United States with respect to adult, mixed-blood allotments but without application on the part of said allottee) commenced an action in the District Court in and for Mahnomen County, Minnesota, Fourteenth Judicial District, to recover the taxes paid by her as above set out for the years 1911 to 1921, inclusive. A demurrer to her complaint was interposed and sustained by order of said court dated March 11, 1927. She did not appeal, plead over or proceed further in said action (R. 21-22).

The United States (though its amended complaint does not allege that Isabelle Garden, or any allottee, had paid any taxes voluntarily or otherwise) sought recovery of all taxes paid by said Isabelle Garden as above set out and was by the District Court allowed recovery of those paid for the years 1911 to 1921, inclusive, aggregating $405.97, and denied recovery of those for the years 1922 to 1927, inclusive (R. 35).

The case was submitted to the trial court upon two stipulations of fact. The first was made on January 8, 1941 (R.

12). The second was made on April 8, 1941 (R. 15). The trial court made its findings of fact, conclusions of law, and order for judgment on July 9, 1941 (R. 17).

Judgment was entered upon the findings and conclusions of the District Court (R. 33). The County of Mahnomen by appropriate motions sought a vacation of said judgment and amendments of said findings and conclusions or a new trial (R. 36), and said motions being denied (R. 44), an appeal to the United States Circuit Court of Appeals, Eighth Circuit, followed (R. 45). The United States appealed from the judgment (R. 53).

The Circuit Court of Appeals handed down its decision on December 7, 1942, as stated above.

II.

Jurisdictional Statement.

Petitioner relies upon the following to sustain the jurisdiction of this Court:

a. The United States Judicial Code, Section 240, as amended.

b. There is involved the construction of the Clapp Amendments.

The first Clapp Amendment of June 21, 1906, 34 Stat. 325, 353, provides:

> "That all restrictions as to sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, now or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full

bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application."

The second Clapp Amendment of March 1, 1907, 34 Stat. 1034, provides:

"That all restrictions as to the sale, incumbrance, or taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed, and the trust deeds heretofore or hereafter executed by the Department for such allotments are hereby declared to pass the title in fee simple, or such mixed bloods upon application shall be entitled to receive a patent in fee simple for such allotments; and as to full bloods, said restrictions shall be removed when the Secretary of the Interior is satisfied that said adult full-blood Indians are competent to handle their own affairs, and in such case the Secretary of the Interior shall issue to such Indian allottee a patent in fee simple upon application."

c. There is invoived the construction of the Act of May 8, 1906, 34 Stat. 182, which provides in part:

"Sec. 6. That at the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section five of this Act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law."

d. The date of the judgment in the Circuit Court of Appeals, Eighth Circuit, is December 7, 1942.

III.

Questions Presented.

1. Conceding immunity from taxation during the trust period to be a vested right of adult mixed-blood Indians of the White Earth Reservation, are such Indians empowered to waive such vested right by the following language of the Clapp Amendments:

> "That all restrictions as to the sale, incumbrance, or *taxation* for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed, * * *" (Italics ours.)

2. Is the United States of America bound by such waiver by such Indians?

3. Are adult mixed-blood Indians of the White Earth Reservation in Minnesota emancipated?

4. Could such Indians under the Clapp Amendments voluntarily subject their allotted lands to taxation?

5. Can the United States of America recover moneys voluntarily paid by such Indians as taxes upon such allotted lands?

6. Is the United States bound by the result of an action instituted by such an Indian to recover moneys paid as taxes upon such allotted lands?

7. Is the law the same for money paid as taxes during the trust period and for money paid as taxes after the expiration of the trust period?

8. May the United States of America sue in its own name to recover moneys voluntarily paid as taxes by such Indians upon such allotted lands?

9. Does the Act of May 8, 1906, 34 Stat. 182, subject adult mixed-blood Indians of the White Earth Reservation to all laws of Minnesota, civil or criminal?

IV.

Reasons Relied Upon for Allowance of Writ.

1. This is the first case in which recovery has been ordered of moneys voluntarily paid as taxes by an emancipated Indian upon her allotment, and the conclusion reached by the United States Circuit Court of Appeals, Eighth Circuit, is contrary to the rule laid down by this Court in *Ward, et al.* v. *Board of County Commissioners*, 253 U. S. 17.

2. This is also the first case in which recovery of taxes paid by an Indian allottee of the White Earth Reservation in Minnesota has been sought. It is, therefore, a case of first impression and a test case which is of great importance to the counties of Mahnomen, Clearwater, and Becker in which said reservation is situated. The amount involved in this case is relatively small, but the aggregate amount which will be affected is very large. So large that it may affect the solvency and future operation of these counties.

3. This is the first case in which the courts have had before them the construction of the provision of the Clapp Amendments authorizing the removal of the restriction upon taxation of lands of adult mixed-blood Indians of the White Earth Reservation.

4. The case is of particular importance to the County of Mahnomen since it is wholly within said reservation and since its organization as of January 1, 1907, has been wholly dependent for operating revenues upon tax income from lands owned either by Indian allottees or their grantees.

5. The decision of the Circuit Court of Appeals is contrary to the ruling of this Court in *United States* v. *Waller*, 243 U. S. 452, that the Clapp Amendments are a "Legislative judgment" that adult mixed-blood Indians of the White Earth Reservation are competent.

6. The decision in effect holds invalid that part of the Clapp Amendments which deals with removal of restriction as to taxation. This is contrary to the reasoning contained in other decisions of Federal Courts construing said amendments and particularly to *United States* v. *Waller*, *supra*, *Morrow* v. *United States*, 243 Fed. 854, and *United States* v. *Spaeth*, 24 Fed. Supp. 465, to the effect that adult mixed-blood allotments may not be taxed against the will or without the consent of such allottees. The court thereby implied that such lands could be taxed with the consent of such Indians. So construed the amendments do not impair the vested right of such allottees to tax exemption and at the same time recognize the status of such allottees as competent persons in harmony with the well-recognized policy of the United States to encourage its Indian wards to become competent and to take their place in society as such. This, we submit, is the correct construction, and so construed the amendments are valid in all their parts.

7. The determination of the effect of the Act of May 8, 1906, 34 Stat. 182, is a matter of great importance not only to the State of Minnesota and its political subdivisions but also to the mixed-blood Indians of the White Earth Reservation.

8. If the decision becomes a precedent, there may be many similar suits involving transactions back to 1907. By reason of the long lapse of time, it is inevitable that witnesses will have died and records become lost or mislaid, and the defense will be difficult, costly, and vexatious.

9. In view of the language of the Clapp Amendments and the construction placed upon them by the courts, the county and its officials were justified in assuming that they might lawfully receive and use taxes tendered and voluntarily paid by emancipated allottees. Refunds of taxes so paid at this late date would prove a tremendous burden and might well prove disastrous.

10. The ruling of the Circuit Court of Appeals denies to the mixed-blood Indians of the White Earth Reservation the right to avail themselves of greater and better privileges of county government, such as roads and schools, by increasing the money available therefor by the voluntary payment of taxes upon their allotted lands.

11. It is submitted that the public interest will be promoted by a prompt settlement in this Court of the questions involved which are important and vital to the counties affected and their inhabitants.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals, Eighth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the cases numbered and entitled on its docket No. 12340, Civil, County of Mahnomen, a municipal corporation, appellant, vs. United States of America, appellee, and No. 12376, Civil, United States of America, appellant, vs. State of Minnesota, et al., appellees, being the appeal and cross-appeal from the District Court of the United States for the District of Minnesota, and that the judgment of the United States Circuit Court of Appeals, Eighth Circuit, may be reversed by this Honorable Court, and that your

petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just, and your petitioner will ever pray.

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vs.

THE UNITED STATES OF AMERICA.

BRIEF IN SUPPORT OF THE PETITION.

I.

Opinion Below.

The opinion of the United States Circuit Court of Appeals, Eighth Circuit, is as yet unreported, but is set forth verbatim in the record beginning at page 61.

II.

Jurisdiction.

A statement as to the jurisdiction of the Supreme Court of the United States is set forth in the petition.

III.

Statement.

A statement of the facts, the questions presented and the reasons relied upon for the issuance of the writ will be found in the petition.

IV.

Argument.

The Clapp Amendments which are set forth in the petition are directly involved in the case at bar. These have been before this Court and other Federal courts in cases involving the construction of provisions other than that which petitioner relies upon in this case. There is also before the court a part of the Act of May 8, 1906, 34 Stat. 182, which is set forth in the petition. The questions presented and the reasons relied upon for the allowance of the writ, we shall not restate. We rely on all of them but shall not discuss them separately.

The second Clapp Amendment, among other things, provides "That all restrictions as to the * * * taxation for allotments within the White Earth Reservation in the State of Minnesota, heretofore or hereafter held by adult mixed-blood Indians, are hereby removed * * *." This provision as to taxation is before this Court for construction for the first time. The petitioner contends that the conclusion reached by the Circuit Court of Appeals is contrary to the express provision of the amendment, the intention of the Congress as evidenced by the amendment and the reasoning of this Court in construing the Clapp Amendments in other cases.

That the adult mixed-blood Indians of the White Earth Reservation have a vested right to the exemption of their allotted lands from taxation during the trust period is not disputed by the petitioner. It does contend that such Indians were emancipated by the Clapp Amendments and that, as competent persons, they could voluntarily waive their vested right to tax exemption of their allotted lands during the trust period. This contention, which was denied by the Circuit Court of Appeals, is sustained by the Clapp Amend-

ments and the reasoning of this Court in cases in which the amendments were involved.

In *U. S.* v. *Waller*, 243 U. S. 452, 462, referring to the Clapp Amendments, the court said:

> "The act thus evidences a legislative judgment that adult mixed-blood Indians are, in the respects dealt with in the act, capable of managing their own affairs, and for that reason they are given full power and authority to dispose of allotted lands."

In an earlier case, *U. S.* v. *First National Bank*, 234 U. S. 245, 259, in considering the Clapp Amendments, the court said:

> "Evidently this legislation contemplated in some measure the rights of others who might deal with the Indians, and obviously was intended to enlarge the right to acquire as well as to part with lands held in trust for the Indians."

The reasoning of the court in the above cases was followed by the same Circuit Court of Appeals. In *Morrow* v. *United States*, 243 Fed. 854, 858, that court impliedly recognized the power of such Indians to waive their vested rights when it said:

> "His (an adult mixed-blood Indian's) rights are vested and are impervious to alteration *against his* will except through the sovereign power of eminent domain. One of these rights was freedom from state and local taxation." (Italics supplied.)

The United States District Court for Minnesota also followed this Court's reasoning in construing the Clapp Amendments. The District Court also impliedly recognized the power of such Indians to waive their vested rights when it said in *United States* v. *Spaeth*, 24 Fed. Supp. 465, 466, that the passage of the Clapp Amendments—

> "could not disturb this vested right to be free from taxation during the twenty-five year period unless the Indian *willingly* changed his status by *acceptance* of the rights and privileges contained in said amendment." (Italics supplied.)

and on page 469:

> "Presumably, Congress determined that adult mixed-blood Indians on the White Earth Indian Reservation were capable of self-management so far as their lands were concerned."

In *Ward* v. *Love County*, 253 U. S. 17, 22, this Court said:

> "We accept so much of the Supreme Court's decision as held that, if the payment was voluntary, the moneys could not be recovered back in the absence of a permissive statute, and that there was no such statute. But we are unable to accept its decision in other respects."

There is no permissive statute in Minnesota.

The Supreme Court of Minnesota followed the decision in *Waller* v. *U. S.*, *supra*, when in construing the Clapp Amendments in *Baker* v. *McCarthy*, 145 Minn. 167, 170; 176 N. W. 643, it held:

> "We think it is the general view that the issuance of a fee-simple patent operates, by implication, to emancipate the Indian from Federal guardianship and jurisdiction. Luck Land Co. *v.* Dickson, 132 Minn. 396, 157 N. W. 655, affirmed 242 U. S. 371, 37 Sup. Ct. 167, 61 L. ed. 371. We hold that the same result was accomplished by the provision of the Clapp amendments converting the trust deeds theretofore issued in the case of adult mixed-bloods into instruments of fee-simple title, see United States *v.* Waller, 243 U. S. 452, 37 Sup. Ct. 430, 61 L. ed. 843, and that the Clapp amendments by implication gave to the probate courts of this state jurisdiction to administer the estates and determine the heirs of an adult mixed-blood allottee, whether death occurred before or after these amendments."

The Act of May 8, 1906, 34 Stat. 182, provides in part:

> "Sec. 6. That at the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section five of this Act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law."

Construing the Clapp Amendments, the court in *United States* v. *Spaeth*, *supra*, said:

> "The lands in question were, by reason of that amendment, subject to no alienation restrictions. A title tantamount to fee by reason of legislative enactment existed in the allottee."

Isabelle Garden, the Indian here involved, sought to recover in the state courts of Minnesota some of the taxes which she had voluntarily paid. The state demurred to her complaint. The demurrer was sustained and she took no further steps (R. 15, 16). Under Minnesota law taxes voluntarily paid cannot be recovered.

Falvey v. *Board of County Commissioners*, 76 Minn. 257, 79 N. W. 302;

Gould v. *Board of County Commissioners*, 76 Minn. 379, 79 N. W. 303, 530.

Upon these facts it appears that the State court was exercising jurisdiction conferred upon it by the Clapp Amendment, supra, and the Act of May 8, 1906, supra. The judgment of the State court as a court of competent jurisdiction is binding upon the United States.

It is petitioner's contention that the Circuit Court of Appeals erred in failing to apply to the case at bar the Clapp Amendments and the decisions construing them. Those alone are controlling. It was erroneous to apply

decisions construing acts of Congress relating to Indians and allotted lands other than those of the White Earth Indian Reservation.

The court will note the reference in the opinion of the Circuit Court of Appeals to the statement in the first stipulation of facts "that said land was not legally taxable prior to the year 1928" (R. 14). We respectfully submit that this stipulation must be read together with the second stipulation of facts setting out the record of dates of payments of taxes (R. 15), and the proceedings thereafter. From these it clearly appears that it should have read—"That said land was not legally taxable prior to the year 1928 *without the consent of the allottee.*" (Part in italics supplied.)—and that it did not do so was through inadvertence since that was clearly the theory upon which the case was submitted, briefed, and argued in the District Court and Circuit Court of Appeals. This is confirmed by the District Court when it said (R. 30):

> "The question as to whether or not the payment of the moneys involved was voluntary or involuntary need give us no concern. The settlements were made by the Indians after they were emancipated and there is no evidence in the case to show that their election to proceed in the manner in which they did was involuntary."

We think that the two stipulations and the record fairly present the question whether taxes so paid can be recovered. This is the very issue which all parties are seeking to determine by this litigation.

Mahnomen County lies wholly within the White Earth Indian Reservation. Since its organization in 1907, many Indians have voluntarily paid their taxes through the years in order to have schools, roads and other benefits of county organization. Many of the early officers were Indians. Now, after taxes have been voluntarily paid for more than

30 years by the Indians, the United States for the first time has upon its own initiative commenced an action to recover the taxes so paid. With records and witnesses difficult to find after many years, the actions will be difficult to defend. If the United States should prevail, the solvency of the county will be uncertain and the rights and privileges of the Indians and others to benefits such as schools and roads will be endangered. That part of the White Earth Reservation which is not in Mahnomen County is in Becker and Clearwater Counties. In a lesser but still substantial degree all that threatens petitioner will also affect the other two counties. The amount involved in the case at bar is relatively small but the aggregate amount is many thousands of dollars. The ultimate decision in the case at bar is of vital importance to all these counties.

Conclusion.

Adult mixed-blood Indians of the White Earth Reservation were emancipated by the Clapp Amendments. As competent persons they could voluntarily waive their vested right to tax exemption of their allotted lands during the trust period. The United States is bound by such waiver. The Circuit Court of Appeals erred in holding to the contrary.

As construed above, the provision of the Clapp Amendments relating to taxation is valid. If a valid construction of the provision of the Clapp Amendments was possible, it was error for the Circuit Court of Appeals not to so construe it.

Such Indians are bound by the final disposition of actions brought by them in State courts. The United States is equally bound by the outcome of such case. The Circuit Court of Appeals erred in holding to the contrary.

The United States owes no duty to such Indians under these facts to recover moneys voluntarily paid by them as

taxes. The Circuit Court of Appeals erred in holding to the contrary.

This is the first case before this Court in which the United States has sought to recover and the lower court has held it could recover taxes voluntarily paid by such Indians.

The decision of the Circuit Court of Appeals is contrary to the applicable decisions of this Court.

The case at bar is of vital importance not only to petitioner but also Becker and Clearwater Counties of Minnesota.

The decision of the Circuit Court of Appeals is erroneous and should be reversed.

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